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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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7 IO GROUP, INC., d/b/a TITAN MEDIA, ) Case No. 10-4377 SC  
8 a California corporation, )  
9 Plaintiff, ) ORDER GRANTING REQUEST FOR  
10 v. ) LEAVE TO TAKE LIMITED EARLY  
11 DOES 1-65, individuals, ) DISCOVERY  
12 Defendants )  
13 )  
14 )

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15 **I. INTRODUCTION**

16 On September 28, 2010, Plaintiff Io Group, Inc., doing  
17 business as Titan Media ("Plaintiff"), filed a Complaint against  
18 sixty-five Doe Defendants for copyright infringement. ECF No. 1  
19 ("Compl."). Plaintiff seeks leave to take limited discovery prior  
20 to the scheduled Rule 26 conference in order to identify the Doe  
21 Defendants. ECF No. 4 ("Request for Leave to Take Discovery").  
22

23 **II. BACKGROUND**

24 Plaintiff produces, markets and distributes adult  
25 entertainment products. Compl. ¶ 2. Plaintiff alleges the Doe  
26 Defendants reproduced, distributed and publicly displayed its  
27 copyrighted materials through a peer-to-peer ("P2P") network called  
28 eDonkey2000. Id. ¶ 1. Plaintiff alleges Defendants used an

1 internet connection provided by Cox Communications to access the  
2 internet for the purpose of engaging in the infringing activity.  
3 Id. ¶ 4. Plaintiff seeks leave to serve a Rule 45 third-party  
4 subpoena on Cox Communications.

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6 **III. LEGAL STANDARD**

7 Generally, a party may not initiate discovery before the  
8 parties have met and conferred pursuant to Federal Rule of Civil  
9 Procedure 26(f). However, a court may authorize earlier discovery  
10 "for the convenience of parties and witnesses and in the interests  
11 of justice." Fed. R. Civ. P. 26(d). The requesting party must  
12 demonstrate good cause for earlier discovery. See Semitool, Inc.  
13 v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 276 (N.D. Cal. 2002).

14 According to the Ninth Circuit:

15 [W]here the identity of alleged defendants will  
16 not be known prior to the filing of a  
17 complaint[,] . . . the plaintiff should be  
18 given an opportunity through discovery to  
identify the unknown defendants, unless it is  
clear that discovery would not uncover the  
identities, or that the complaint would be  
dismissed on other grounds.

19  
20 Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). For  
21 leave to conduct discovery to identify a Doe defendant, the moving  
22 party must: (1) identify the defendant with enough specificity to  
23 allow the Court to determine whether the defendant is a real person  
24 or entity who could be sued in federal court; (2) recount the steps  
25 taken to locate the defendant; (3) show that its action could  
26 survive a motion to dismiss; and (4) file a request for discovery  
27 with the Court identifying the persons or entities on whom  
28 discovery process might be served and for which there is a

1 reasonable likelihood that the discovery process will lead to  
2 identifying information. Columbia Ins. Co. v. seescandy.com, 185  
3 F.R.D. 573, 578-80 (N.D. Cal. 1999).

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5 **IV. DISCUSSION**

6 Plaintiff engaged Media Protector International GmbH ("Media  
7 Protector") to locate infringing copies of its works on the P2P  
8 network eDonkey2000. Eichner Decl. ¶ 2.<sup>1</sup> Individuals access the  
9 internet through an internet service provider ("ISP"), and each  
10 time the subscriber accesses the internet, the ISP provides a  
11 unique number to the subscriber called an internet protocol ("IP")  
12 address. Id. ¶ 6. Using the services of Media Protector,  
13 Plaintiff has identified sixty-five IP addresses from which  
14 infringing copies of its works were reproduced and distributed.  
15 Id. ¶¶ 7-11; Compl. ¶¶ 22-86. Plaintiff has also recorded the  
16 exact time and date of these events. Compl. ¶¶ 22-86. Cox  
17 Communications is the ISP that controls all of the IP addresses  
18 identified in Plaintiff's Complaint. Eichner Decl. ¶ 13.  
19 Plaintiff seeks leave to serve a Rule 45 third-party subpoena on  
20 Cox Communications to determine the identity of the subscribers  
21 associated with these IP addresses. Request for Leave to Take  
22 Discovery at 2.

23 **A. Good Cause**

24 The Court finds that Plaintiff has shown good cause for  
25 limited expedited discovery. Expedited discovery is appropriate  
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27 <sup>1</sup> Michael Eichner ("Eichner"), co-owner and chief developer of  
28 Media Protector, filed a declaration in support of the Request for  
Leave to Take Discovery. ECF No. 5.

1 because ISPs typically retain subscriber logs for only a short  
2 period of time before destroying the information. Eichner Decl.  
3 ¶ 10. A third-party subpoena appears to be the only way Plaintiff  
4 can identify the Doe Defendants, and Plaintiff must identify them  
5 in order to effect service of process.

6 **B. The Seescandy.com Factors**

7 The Court finds that Plaintiff has satisfied the four-factor  
8 test outlined in seescandy.com for leave to conduct discovery to  
9 identify Doe defendants. Plaintiff has identified the Defendants  
10 with specificity, and recounted the steps taken to locate  
11 Defendants, by identifying IP addresses, as well as exact dates and  
12 times of alleged infringing activity. See Eichner Decl.; Compl. ¶¶  
13 22-86.

14 In order to succeed in a copyright infringement claim, "a  
15 plaintiff must show that he or she owns the copyright and that  
16 defendant copied protected elements of the work." Cavalier v.  
17 Random House, Inc., 297 F.3d 815, 822 (9th Cir. 2002) (citing Shaw  
18 v. Lindheim, 919 F.2d 1353, 1356 (9th Cir. 1990)). Here, Plaintiff  
19 has submitted copies of registration certificates issued by the  
20 U.S. Copyright Office for the works identified in the Complaint.  
21 See Ruoff Decl. Ex. A.<sup>2</sup> Taken together with the allegations of  
22 unauthorized reproduction and distribution in the Complaint,  
23 Plaintiff has demonstrated that its claim of copyright infringement  
24 is likely to survive a motion to dismiss.

25 Plaintiff seeks leave to serve a subpoena on Cox  
26 Communications to determine the names and addresses of the

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27 <sup>2</sup> Keith Ruoff ("Ruoff"), Vice President of Io Group, Inc., filed a  
28 declaration in support of the Request for Leave to Take Discovery.  
ECF No. 6.

1 subscribers to whom Cox Communications assigned the IP addresses  
2 identified in the Complaint. Request for Leave to Take Discovery  
3 at 6-7. As such, Plaintiff has identified the entity that should  
4 be served. Having satisfied the seescandy.com factors, the Court  
5 finds that Plaintiff should be permitted to serve a subpoena on Cox  
6 Communications. The subpoena should be substantially identical in  
7 form to the subpoena attached as Exhibit A to Plaintiff's Request,  
8 although the subpoena should be limited to a request to produce  
9 documents sufficient to identify the names, addresses, telephone  
10 numbers, and e-mail addresses associated with the sixty-five IP  
11 addresses.<sup>3</sup>

12 **C. Opportunity to Move to Quash or Modify**

13 Federal Rule of Civil Procedure 45 provides that a subpoena  
14 may be quashed or modified if it requires disclosure of privileged  
15 or "other protected matter," or if it subjects a person to undue  
16 burden. Fed. R. Civ. P. 45(c)(3)(A)(iii) and (iv). As such, Cox  
17 Communications shall be required to provide notice of the subpoena  
18 to the subscribers so that they have the opportunity to move to  
19 quash or modify. While the Court is granting Plaintiff's request  
20 to serve the subpoena on Cox Communications, the Court is not  
21 predetermining the merits of any motion to quash or modify that  
22 might be filed by Doe Defendants after they receive notice.

23  
24 **V. CONCLUSION**

25 For good cause shown, Plaintiff's Request for Leave to Take

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26 <sup>3</sup> The attached proposed subpoena also seeks documents sufficient to  
27 identify "Media Access Control" addresses, but Plaintiff has not  
explained their role to the Court or why they are necessary. As  
28 such, they should not be requested in the subpoena sent to Cox  
Communications.

1 Early Limited Discovery is GRANTED. Plaintiff may serve a Rule 45  
2 subpoena on Cox Communications seeking documents sufficient to  
3 identify the names, addresses, telephone numbers, and e-mail  
4 addresses associated with the sixty-five IP addresses identified in  
5 the Complaint. Cox Communications, in turn, shall serve a copy of  
6 the subpoena and a copy of this Order upon its relevant subscribers  
7 within ten (10) days of its receipt of the subpoena. The  
8 subscribers shall then have fifteen (15) days from the date of  
9 service upon them to file any motions to quash or modify. If that  
10 15-day period elapses without a subscriber filing a motion to quash  
11 or modify, Cox Communications shall have ten (10) days to produce  
12 that subscriber's name, address, phone number, and e-mail address  
13 to Plaintiff pursuant to the subpoena.

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15 IT IS SO ORDERED.  
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17 Dated: October 15, 2010

  
18 UNITED STATES DISTRICT JUDGE

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